

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-12-022

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIRST
AMERICAN TITLE INSURANCE COMPANY

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of First American Title Insurance Company ("Respondent"), pursuant to §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the verified MCE Report ("Report") dated July 8, 2011, the written submissions and rebuttals provided August 8, 2011 by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009 through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a title insurer in the State of Colorado.
2. On May 9, 2011, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on May 9, 2011. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which the Examiner-In-Charge timely filed

with the Division, under oath, on July 8, 2011. The Report was subsequently timely transmitted to Respondent on July 8, 2011.

5. On July 8, 2011, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1) the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On August 8, 2011 Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's August 8, 2011 submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.
10. This MCE was not conducted as an informal investigation of consumer complaints.
11. This MCE did not proceed and was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

CONCLUSIONS OF LAW AND ORDER

12. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: Issue A5 was removed from the Report. Issue A6 was renumbered to A5. The language under the current Issue A5 has been modified regarding the transaction of title business by unlicensed agents.
13. The Commissioner finds the Respondent is operating in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
14. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-

1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

15. A copy of the Modified Report is attached to the Final Agency Order and is incorporated herein. The July 8, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttals on August 8, 2011. The Commissioner hereby orders Respondent to cure the violations set forth below in the time frame and manner set forth below.
16. Issue A1 concerns the following: Failure to provide an anti-fraud statement as required by Colorado insurance law. (*The examiners find this to be a repeat of prior issue A in the findings of the market conduct examination report for calendar year 2002.*) This failure constitutes a violation of § 10-1-128, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised all relevant forms and fully implemented procedures to ensure that all title insurance policies, applications or claim forms include the required verbiage regarding fraudulent acts and penalties, as required by Colorado insurance law § 10-1-128, C.R.S. The Division's records indicate that the Respondent has revised its title insurance policies to include the required verbiage regarding fraudulent acts and penalties, which if fully implemented, appears to comply with the corrective actions ordered concerning this violation.

In the market conduct examination for the period January 1, 2002 to December 31, 2002, First American was cited for failure to display an anti-fraud statement. The violation resulted in Recommendation #9 of Final Agency Order O-04-183, stating that "The Respondent shall provide evidence that it has modified its procedures to ensure disclosure of the anti-fraud statement in accordance with Colorado insurance law." Failure to comply with the previous order of the commissioner constitutes a violation of § 10-1-205(3)(a), C.R.S.

17. Issue A2 concerns the following: Failure to adopt and implement reasonable standards for claims processing. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7. At this time, the Commissioner is not including a violation of § 10-3-1104(1)(h)(III), C.R.S. However, the Commissioner reserves the right to conduct a hearing under § 10-3-1107, C.R.S., regarding this issue at some future date. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has adopted and implemented identifiable and quantitative reasonable standards to ensure prompt investigation of claims arising under its insurance policies, as required by Colorado insurance law.
18. Issue A3: Failure to require its agents to retain adequate documentation and records in its title underwriting files. This failure constitutes a violation of §§ 10-11-106, 10-11-122, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written

evidence to the Division that it has developed and disseminated communication to First American's agents regarding the agents responsibility to retain specific and adequate documentation and records in their title underwriting files, for the required length of time, as required by Colorado insurance law.

19. Issue A4: Failure to provide adequate agent oversight of privacy protection policy. This failure constitutes a violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has developed and disseminated communication to First American's agents regarding the agents responsibility to comply with the privacy protection policy disclosure laws and regulations, as required by Colorado insurance law.
20. Issue A5: Failure, in some instances, to ensure producers were duly licensed prior to transacting business on behalf of First American resulting in the transaction of unauthorized insurance, and/or failure to maintain adequate licensing records. This failure constitutes a violation of §§ 10-2-401, 10-2-406, 10-11-116 C.R.S. and Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that it verifies the license status of all producers prior to transacting business on behalf of First American, maintains documentation of such verification in its files, and has implemented procedures to ensure that First American's agents comply with licensing requirements, as required by Colorado insurance law.
21. Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner. (*The examiners find this to be a repeat of prior issue B in the findings of the market conduct examination report for calendar year 2002.*) This failure constitutes a violation of § 10-11-118, C.R.S., and Colorado Insurance Regulation 3-5-1. At this time, the Commissioner is not including a violation of § 10-3-1104(1)(f)(II), C.R.S. However, the Commissioner reserves the right to conduct a hearing under § 10-3-1107, C.R.S., regarding this issue at some future date. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that all title policy and endorsement charges are issued with premium determinations that are consistent with filed rates, as required by Colorado insurance law.

In the market conduct examination for the period January 1, 2002 to December 31, 2002, First American was cited for failure to use filed rates. The violation resulted in Recommendation #10 of Final Agency Order O-04-183, stating that "The Respondent shall provide evidence that it has reviewed its procedures to ensure use of filed rates in accordance with Colorado insurance law." Failure to comply with the previous order of the commissioner constitutes a violation of § 10-1-205, C.R.S.

22. Issue G1: Failure, in some instances, to conduct, preserve and retain in title files a reasonable examination of the title. This failure constitutes a violation of § 10-11-106, C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that a reasonable title examination has been conducted, preserved and maintained in its files, as required by Colorado insurance law.
23. Issue G2: Failure, in some instances, to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured. This failure constitutes a violation of § 10-11-122., C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that a certificate of taxes due, or instructions eliminating the requirement, is obtained and retained prior to issuance of the title policy, as required by Colorado insurance law.
24. Issue G3: Failure, in some instances, to provide evidence of the special taxing district disclosure. This failure constitutes a violation of § 10-11-122, C.R.S. and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that the special taxing district disclosure is provided with each title commitment issued for the sale of residential real property, as required by Colorado insurance law.
25. Issue G4: Failure, in some instances, to provide evidence that the Gap disclosure had been provided. This failure constitutes a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that the Gap disclosure is provided with each title commitment issued for an owner's title insurance commitment, as required by Colorado insurance law.
26. Issue G5: Failure, in some instances, to provide evidence that the severed mineral estate disclosure had been provided. This failure constitutes a violation of § 10-11-123, C.R.S. and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that the severed mineral estate disclosure is provided with each title commitment issued for an owner's title insurance policy, when it is determined that a mineral estate has been severed from the surface estate, as required by Colorado insurance law.
27. Issue G6: Failure, in some instances, to provide evidence that the mechanic's lien disclosure had been provided. This failure constitutes a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final

Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that the mechanic's lien disclosure is provided with each title commitment issued for an owner's title insurance policy, as required by Colorado insurance law.

28. Issue G7: Failure, in some instances, to provide evidence that the privacy disclosure had been provided. This failure constitutes a violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure that the privacy disclosure is provided, as required by Colorado insurance law.
29. Issue G8: Failure, in some instances, to provide evidence of an update of the title commitment, when First American's agent or direct operation provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance. This failure constitutes a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure evidence of an update to the commitment, where First American's agent or direct operation provided closing and settlement services in conjunction with the issuance of an owner's policy of title insurance, as required by Colorado insurance law.
30. Issue G9: Failure, in some instances, to provide evidence of written instructions, from all necessary parties, when First American's agent or direct operation provided closing and settlement services. This failure constitutes a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure evidence of written instructions from all necessary parties, where First American's agent or direct operation provides closing and settlement services, as required by Colorado insurance law.
31. Issue G10: Failure, in some instances, to require the agents to remit premiums within the required contractual time period. This failure constitutes a violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure timely remittance of premium, as required by Colorado insurance law.
32. Issue G11: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date. This failure constitutes a violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to ensure untimely remittance of premium is timely reported to the Commissioner as

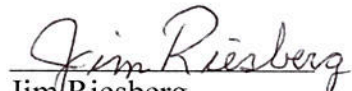
required by Colorado insurance law.

33. Issue G12: Failure, in some instances, to maintain and provide records required for a market conduct examination. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to maintain appropriate policy file records, as required by Colorado insurance law.
34. Issue J1: Failure, in some instances, to include the initial date of receipt, date-stamped by the insurer on documents in claims files as required for a market conduct examination. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to include the initial date of receipt, stamped by the insurer on notice of claim documents in claims files, as required by Colorado insurance law.
35. Issue J2: Failure, in some instances, to maintain and provide claim records required for a market conduct examination. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has fully implemented procedures to maintain claims records, as required by Colorado insurance law.
36. The issues and violations described in paragraphs 16 through 35 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of three hundred three thousand and no/100 dollars (\$303,000.00) for the cited violations of Colorado law. The \$303,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of three hundred ten thousand five hundred and no/100 dollars (\$310,500.00). This penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order. This surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program.
37. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report, as modified and adopted by this Final Agency Order, dated August 29, 2011.
38. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions,

penalties and sanctions, as provided for by law. The Commissioner reserves the right to conduct a hearing under § 10-3-1107, C.R.S., regarding Issues A2 and F1 at some future date.

39. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
40. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
41. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

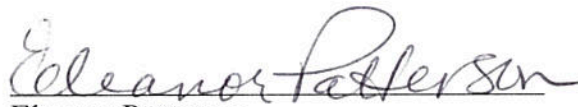
WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated July 8, 2011, subsequently adopted by the commissioner with modifications on August 29, 2011, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 29th day of August, 2011.


Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of August, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-022 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIRST AMERICAN TITLE INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Dennis Gilmore, President
First American Title Insurance Company
1 First American Way
Santa Ana, CA 92707

A handwritten signature in cursive script that reads "Eleanor Patterson". The signature is written in dark ink and is positioned above the printed name.

Eleanor Patterson
Market Regulation Administrator
Division of Insurance